Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 02-64
Of Regulatory Fees for	)	
Fiscal Year 2000	)	

To the Commission:

COMMENTS OF THE ALLIED PERSONAL COMMUNICATIONS INDUSTRIES ASSOCIATION OF CALIFORNIA (ALLIED) IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

David M. Wilson
Leon M. Bloomfield
Wilson & Bloomfield LLP
1901 Harrison Street, Suite 1630
Oakland, CA 94612
Tel: 510.625.8250
Fax: 510.625.8253

Attorneys for Allied

Table of Contents

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I. INTRODUCTION

Allied Personal Communications Industries Association of California ("Allied")[1] respectfully submits these Comments in response to the Notice of Proposed Rulemaking released by the Commission on March 27, 2002 in the above-captioned proceeding (the "NPRM"). Allied recognizes the importance of the many services provided by the Commission that are funded by the Regulatory Fee and the need to adjust those fees as a result of increased costs. However, the Regulatory Fee adjustment proposed in this NPRM disproportionately burdens the paging industry in a manner which is neither justifiable nor consistent with Section 159 of the Communications Act of 1934 (as amended) (the "Act").

In brief, the proposed increase is inequitable, discriminatory and violates the provisions of Section 159(b) which requires that the fees assessed are to be "reasonably related to the benefits provided to the payor of the fee by the Commission's activities…" Although the overall revenue requirements for all providers is 9.3%, the proposed per unit fee adjustments for paging and cellular – which are based on projected number of units in service (and not revenue) – increase by 60% for paging and decrease by 11% for cellular. At the same time, interstate telecommunications providers (including IXCs and ILECs) – whose adjustments are based on interstate revenues (and not units in service) – face a 16% increase. There is simply no rational basis to justify such disparate treatment of telecommunications providers in general or paging carriers in particular. (See Section II.1-2, infra.)

Moreover, the proposed 60% increase in per unit fees for paging carriers is nothing less than confiscatory and could cause irreparable damage to the only industry sector that otherwise provides vital, low cost, reliable telecommunications services to millions of public safety personnel and ordinary citizens through the country. (See Section II.3, infra.)

Thus, Allied respectfully suggests that the current fee schedule for CMRS carriers be revised by using projected interstate revenue as the "unit" of measurement for assessing Regulatory Fees consistent with the treatment otherwise afforded to Interstate Telecommunications Service Providers. As a legal matter, such a revision would establish an equitable and competitively neutral method for adjusting fees. As a practical matter, such a revision has the effect of reducing the equivalent per paging unit fee from $.05 to just under $.04 (and the corresponding cellular unit fee from $.27 to less than $.25) while maintaining the projected CMRS revenue requirements. (See Section II.4, infra.)

[1] Allied is a trade association which for more than forty years has represented the interests of national, regional and local paging carriers doing business in the State of California. Allied has recently broadened its mission to address federal regulatory/legislative issues, and expanded its membership to include paging carriers that operate in the various states throughout the country.

II.
ANALYSIS

1. The Proposed Regulatory Fee Adjustment Violates Section 159(b) of the Act.

Section 159(b) of the Act provides, in part, that regulatory fees shall be:

> "…adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use and other factors that the Commission determines are necessary in the public interest"

The proposed adjustment to the regulatory fee for paging carriers bears no relation to the benefits provided by the Commission. The Commission is faced with a 9.3% budget increase.[2] However, the proposed regulatory fee adjustment for paging carriers – which is based on the projected number of paging units in service – results in a 60% increase per unit. By contrast, cellular carriers are subject to an 11% decrease per unit while the proposed regulatory fee adjustment for Interstate Telecommunications Service Providers (a group which includes local exchange carriers and interexchange carriers) increases 16%.

Although Allied appreciates the difficult – and vital – tasks the Commission is required to perform, neither the record, nor experience, supports a finding that the benefits received by paging carriers have increased by 60% over the past year or that they have increased at a rate four to seven times that of other telecommunications providers.

[2] The proposed schedule of charges in the NPRM imposes an average increase in regulatory fees (per unit and per fee category) of 10.7%. With almost no exceptions, the per unit fee for paging is scheduled to increase at a rate many times that of the per unit charge for any other category. A comparison of the relative per unit increases is attached hereto as Exhibit A. Such disparities are inevitable when the units of measurement are inherently unequal (e.g., revenue, paging units, licenses, cellular units, etc.).

2. A Per Unit Charge – Based on the Number of Units in Service – is Inherently Discriminatory and is Otherwise Not Competitively Neutral.

The imposition of regulatory fees based on the number of units in service is inherently discriminatory.[3] In essence, it rewards carriers that are experiencing increased subscribership by lowering their per unit rate and punishes carriers that are experiencing declining end-user bases by increasing their per unit rate. In this instance, it results in a 60% increase in per unit fees for paging carriers and an 11% decrease in per unit fees for cellular carriers.[4] Taken to the extreme, this methodology would dictate that if there were only one paging carrier left and that carrier had one paging unit, the revenue requirement per unit would be $1.776 million. Such a result is clearly absurd and although clearly not the intent of the Commission, it is the (il)logical extension of the current methodology.

Moreover, the imposition of fees based on units in service does not take into account the differential in end-user revenue per unit or the extent of interstate services provided per unit. Even the most simplistic comparison of the per unit charge exposes the vagaries of the current system. For example, the ratio between the per unit fee for paging carriers and the per unit fee for cellular carriers is 1:3 (i.e., $.08: $.24), while an analysis of the total number of projected end-users (as perhaps the simplest possible surrogate for the "benefits" provided to the respective industries), should lead to a ratio of over 1:5 (i.e., 23.6 million paging units: 125 million cellular units).

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[3] The inherently discriminatory nature of assessing fees on a per unit (or "connection") basis is also discussed in the Comments filed by Allied on April 22, 2002 in the Federal-State Board on Universal Service, CC Dkt. Nos. 96-45, 98-171, 90-571, 92-237, 99-2000, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43 (rel. February 26, 2002) ("Universal Service Fee FNPRM").

The more meaningful comparison, however, is the ratio of total revenue requirements for the respective industry groups. Under the current proposal, that ratio is just under 1:17 (i.e., $1.776 million for CMRS Messaging to $29.953 million for CMRS Cellular). Although the ratio is significant, it pales by comparison to the ratio of projected interstate revenues which is over 1:37 and provides a more relevant measure for allocating Regulatory Fees between and among carrier types.[5]

3. A Revenue-Based Allocation of Fees is Equitable and Competitively Neutral.

If the Commission were to revise its calculations of Regulatory Fees for CMRS based on a revenue-based model, as it has done for Interstate Telecommunications Service providers, it could generate its current revenue requirements in a way that is equitable, competitively neutral and consistent with Section 159(b). As this Commission has already recognized in numerous other proceedings, revenue-based assessments ensure fair, non-discriminatory and competitively neutral surcharge and cost-recovery models.[6] Such a model also has the advantage that both the Commission and carriers are familiar with the concept of revenue-based reporting. In fact, the

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[4] See NPRM at Ex. C; see also, Assessment and Collection of Regulatory Fees for Fiscal Years 2001, MD Dkt. No. 01-076, Report and Order, FCC 01-106 (rel. July 7, 2001) at Ex. C. (From 2001 to 2002, projected paging units decrease from 30,000,000 to 23,600,000 while projected cellular units increase from 90,000,000 to 125,000,000).

[5] The 37:1 ratio is calculated by multiplying the number of projected units, by the average annual revenue per unit by the percentage of revenue that is considered to be interstate. The calculations are as follows:

Paging Carriers:	(23.6 million units)($8 ARPU x 12 months)(.12 safe harbor)	= $271,872,000
Cellular Carriers:	(125 million units)($45.27 ARPU x 12 months)(.15 safe harbor)	= $10,185,750,000.

This ratio is 1:30 if total projected end user revenues (not just interstate revenues) are compared although there may be jurisdictional issues raised by basing fees, at least in part, on intrastate revenues. Cf., Texas Office of Public Utility Counsel v. FCC, (5th Cir. 1999) 183 F.3d 393, 488.

revenue-based model is currently used for almost all, if not all, FCC and state imposed surcharges including Telephone Relay Service, Universal Service, Number Administration and Local Number Portability Support Mechanisms.

The Allied proposal is to use the various CMRS carriers projected interstate revenue as the "unit" of measurement for allocating Regulatory Fees and any adjustments to those fees. This can be done by determining the total revenue requirements for CMRS, dividing that figure by the total projected interstate revenue for CMRS[7] and calculating a contribution factor. Such a calculation results in a per "unit" fee (or contribution factor) of .0030 for each dollar of projected interstate revenue for FY 2002. [8] This in turn translates into a reduction of the cellular carriers per unit rate from $.27 to just under $.25 and a reduction of the paging carriers per unit rate from $.05 to less than $.04. [9] At the same time, the projected revenue generated by CMRS under this proposal would meet the revenue requirements outlined in the NPRM.

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[6] See Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, Report and Order, 12 FCC Rcd. 8776, 9206-09, ¶¶ 844-850 (1997) as corrected by Federal-State Joint Board on Universal Service, Erratum, CC Dkt No. 96-45, FCC 97 157 (rel. June 4, 1997) aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel, 183 F.3d 393 (5th Cir. 1999), cert. Denied 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000); See also, In re Number Resource Optimization, CC Dkt No. 99-200; Report and Further Notice of Proposed Rulemaking FCC 00-104 (rel. March 31, 2000) at ¶207. ("We further conclude that the costs of thousands-blocks number pooling be allocated to all telecommunication carriers in proportion to each carrier's interstate, intrastate and international telecommunication end user revenues.")

[7] The projected interstate revenue figures can be derived from Form 499A or by the method discussed in footnote 5 on pg. 6 of these Comments.

[8] This figure contrasts with the .00153 proposed for Interstate Telecommunications Service Providers.

[9] Such an adjustment would amount to an effective reduction of per unit charges for cellular from $.31 in FY 2000 to $.25 in FY 2002 with a slight reduction of the paging per unit charge from $.04 in FY 2000 to $.035 in FY 2002.

The analysis, based on data already collected or established in the NPRM and the Universal Service Fee FNPRM is as follows:

Description	CMRS Messaging Service	CMRS (Cellular/Mobile Service)	Combined CMRS
Unit-Based Allocation			
Projected Revenue Requirements	$ 1,776,184	$ 29,953,140	$ 31,729,324
Projected Units	23,600,000	125,000,000	
Projected Revenue Generated	$ 1,776,184	$ 29,953,140	$ 31,729,324
Proposed Regulatory Fee per Unit	$ 0.08	$ 0.24	
Regulatory Fee per Interstate Revenue	$ 0.0065	$ 0.0029	
Revenue-Based Allocation			
Projected Revenue Requirements	$ 1,776,184.00	$ 29,953,140.00	$ 31,729,324
Projected Units	23,600,000	125,000,000	
Projected Annualized ARPU	$ 96.00	$ 543	
Interstate Factor	0.12	0.15	
Total Interstate Revenue	$ 271,872,000	$ 10,185,750,000	$ 10,457,622,000
Contribution Factor			0.0030
Projected Revenue Generated	$ 824,883.02	$ 30,904,440.98	$ 31,729,324
Revised Regulatory Fee per Unit	$ 0.035	$ 0.247	
Revised Fee per Interstate Revenue	0.0030	0.0030	

As the illustration above establishes, such a revenue-based model would ensure that future adjustments to the Regulatory Fee could easily and equitably account for any fluctuations in the relative revenue generated by the carriers whether it be the result of increased units, reduced ARPUs or increased percentage of interstate revenue.[10]

[10] Given the competitive nature of the telecommunications industry in general, and the blurring of some of the more traditional lines of distinction among certain carrier types, Allied suggest that the Commission also consider combining the projected Regulatory Fee requirements for all telecommunications service providers (i.e., CMRS and Interstate Telecommunications Service Providers) and allocating those fees on a revenue-based model. As described in Appendix B, such a model would result in an overall contribution level of .00174 per dollar of interstate revenue for all carriers.

4. <u>The Imposition of a Connection-Based Assessment is Potentially Devastating to Paging Carriers</u>.

As recognized throughout the telecommunications industry, and as discussed in Allied's Comments filed in the Universal Service Fee FNPRM, the paging industry is faced with grave challenges at this time. Almost all of the national paging carriers (including PageNet, Arch Communications, TSR Wireless LLC, Mobilemedia Communication, Weblink Wireless and Metrocall) have filed for bankruptcy protection, or announced their intention to do so. The total number of paging subscribers has declined. The capital markets have turned their backs on the industry and the primary infrastructure providers (Glenayre and Motorola) have left the field. In addition, PCIA, the (former) national industry organization has recently declared that it is no longer representing the interests of paging carriers on regulatory or legislative matters.

Nonetheless, the paging industry is prepared to face these challenges. Numerous carriers – national, regional and local - remain dedicated to providing their end users with low-cost, highly reliable paging services as well as new technologies. New manufacturers have arisen to fill the void created by Glenayre and Motorola and carriers are in the process of forming new national organizations to represent the industry and the vital services it provides.

Regardless of the state of the paging industry, neither it (nor any other industry) should be saddled with a disproportionate increase in its per "unit" share of Regulatory Fees. Under the current conditions, the industry simply cannot absorb such inequitable obligations while it works to face the many other challenges that lie ahead. Again, the paging industry seeks no favors from this Commission, but it does not expect to be disproportionately burdened either.[11]

III.
CONCLUSION

Allied respectfully requests that the Commission modify the way it assesses regulatory fees on CMRS carriers to a revenue-based model (as it has done for Interstate Telecommunications Service Providers) instead of the current per paging unit/cellular unit model. The revised revenue-based model maintains the revenue requirements of the Commission while allocating those projected costs in an equitable, non-discriminatory and competitively neutral manner that will be able to account for any future market fluctuations. [12]

Respectfully Submitted,

David M. Wilson
Leon M. Bloomfield
Wilson & Bloomfield LLP
1901 Harrison Street, Suite 1630
Oakland, CA 94612
Tel: 510.625.8250
Fax: 510.625.8253

[11] In the alternative, if the Commission were not inclined to adopt a revenue-based model at this time, Allied proposes that as a matter of public interest, and in recognition of the current challenges facing the paging industry, the Regulatory Fee for CMRS Messaging be reduced to $.04 per unit and that the corresponding Regulatory Fee for CMRS (Cellular/Messaging) be reduced to $.25 per unit. See 47 C.F.R. § 159(b)(3).

[12] Allied is not unmindful of the fact that given the current market realities, this proposal leads to a reduction in the overall paging contribution. However, as the fortunes of paging (as well as other carriers) turn, the revenue-based model would assure that their regulatory fees would be adjusted accordingly.

EXHIBIT A

FEE CATEGORY	2001 REGULATORY FEE	PROPOSED 2002 REGULATORY FEE	ADJUSTMENT (%)
PLMRS (Exclusive Use)	$ 5.00	$ 5.00	0.00%
PLMRS (Shared Use)	$ 5.00	$ 5.00	0.00%
Microwave	$ 5.00	$ 10.00	100.00%
218-219 MHz (formerly IVDS)	$ 10.00	$ 25.00	150.00%
Marine (Ship)	$ 10.00	$ 10.00	0.00%
Marine (Coast)	$ 5.00	$ 10.00	100.00%
GMRS	$ 5.00	$ 5.00	0.00%
Rural Radio (previously Land Mobile)	$ 5.00	$ 5.00	0.00%
Aviation (Aircraft)	$ 5.00	$ 5.00	0.00%
Aviation (Ground)	$ 10.00	$ 10.00	0.00%
Amateur Vanity Call Signs	$ 1.20	$ 1.45	20.83%
AM Class A			
<=20,000	$ 450.00	$ 500.00	11.11%
20,001 - 50,000	$ 850.00	$ 925.00	8.82%
50,001 - 125,000	$ 1,375.00	$ 1,500.00	9.09%
125,001 - 400,000	$ 2,050.00	$ 2,250.00	9.76%
400,001 - 1,000,000	$ 2,850.00	$ 3,125.00	9.65%
>1,000,000	$ 4,550.00	$ 4,975.00	9.34%
AM Class B			
<=20,000	$ 350.00	$ 375.00	7.14%
20,001 - 50,000	$ 675.00	$ 725.00	7.41%
50,001 - 125,000	$ 900.00	$ 975.00	8.33%
125,001 - 400,000	$ 1,450.00	$ 1,575.00	8.62%
400,001 - 1,000,000	$ 2,300.00	$ 2,525.00	9.78%
>1,000,000	$ 3,750.00	$ 4,100.00	9.33%
AM Class C			
<=20,000	$ 250.00	$ 275.00	10.00%
20,001 - 50,000	$ 350.00	$ 375.00	7.14%
50,001 - 125,000	$ 475.00	$ 525.00	10.53%
125,001 - 400,000	$ 725.00	$ 800.00	10.34%
400,001 - 1,000,000	$ 1,300.00	$ 1,425.00	9.62%
>1,000,000	$ 1,900.00	$ 2,075.00	9.21%
AM Class D			
<=20,000	$ 300.00	$ 325.00	8.33%
20,001 - 50,000	$ 475.00	$ 525.00	10.53%
50,001 - 125,000	$ 700.00	$ 775.00	10.71%
125,001 - 400,000	$ 875.00	$ 950.00	8.57%
400,001 - 1,000,000	$ 1,550.00	$ 1,700.00	9.68%
>1,000,000	$ 2,400.00	$ 2,625.00	9.38%
FM Classes A, B1 & C3			
<=20,000	$ 350.00	$ 375.00	7.14%
20,001 - 50,000	$ 675.00	$ 725.00	7.41%
50,001 - 125,000	$ 900.00	$ 975.00	8.33%
125,001 - 400,000	$ 1,450.00	$ 1,575.00	8.62%
400,001 - 1,000,000	$ 2,300.00	$ 2,525.00	9.78%
>1,000,000	$ 3,750.00	$ 4,100.00	9.33%

Fee Category	2001 Regulatory Fee		Proposed 2002 Regulatory Fee		Adjustment (%)
FM Classes B, C C1 & C2					
<=20,000	$	450.00	$	500.00	11.11%
20,001 - 50,000	$	850.00	$	925.00	8.82%
50,001 - 125,000	$	1,375.00	$	1,500.00	9.09%
125,001 - 400,000	$	2,050.00	$	2,250.00	9.76%
400,001 - 1,000,000	$	2,850.00	$	3,125.00	9.65%
>1,000,000	$	4,550.00	$	4,975.00	9.34%
AM Construction Permits	$	280.00	$	370.00	32.14%
FM Construction Permits	$	925.00	$	1,500.00	62.16%
Satellite TV	$	740.00	$	805.00	8.78%
Satellite TV Construction Permits	$	480.00	$	420.00	-12.50%
VHF Markets 1-10	$	45,100.00	$	47,050.00	4.32%
VHF Markets 11-25	$	32,825.00	$	34,700.00	5.71%
VHF Markets 26 - 50	$	21,325.00	$	23,625.00	10.79%
VHF Markets 51 - 100	$	13,750.00	$	15,150.00	10.18%
VHF Markets Remaining Markets	$	3,275.00	$	3,525.00	7.63%
VHF Markets Construction Permits	$	3,075.00	$	2,750.00	-10.57%
UHF Markets 1-10	$	15,150.00	$	12,800.00	-15.51%
UHF Markets 11-25	$	12,300.00	$	10,300.00	-16.26%
UHF Markets 26 - 50	$	7,075.00	$	6,600.00	-6.71%
UHF Markets 51 - 100	$	4,075.00	$	3,875.00	-4.91%
UHF Markets Remaining Markets	$	1,150.00	$	1,075.00	-6.52%
UHF Markets Construction Permits	$	4,000.00	$	5,175.00	29.38%
Auxillaries	$	10.00	$	10.00	0.00%
International HF Broadcast	$	680.00	$	495.00	-27.21%
LPTV/Translators/Boosters	$	305.00	$	320.00	4.92%
CARS	$	55.00	$	65.00	18.18%
Cable Systems	$	0.49	$	0.53	8.16%
Interstate Telecommunications Service Providers	$	0.00132	$	0.00153	15.91%
CMRS (Cellular/Public Mobile)	$	0.27	$	0.24	-11.11%
CMRS Messaging Service	$	0.05	$	0.08	60.00%
MDS/MMDS/LMDS	$	450.00	$	430.00	-4.44%
International Bearer Circuits	$	5.00	$	2.00	-60.00%
International Public Fixed	$	1,275.00	$	1,400.00	9.80%
Earth Stations	$	180.00	$	140.00	-22.22%
Space Stations (Geostationary)	$	98,125.00	$	99,700.00	1.61%
Space Stations (Non-goestationary)	$	94,425.00	$	123,850.00	31.16%
Average Adjustment					10.71%

EXHIBIT B

DESCRIPTION	CMRS MESSAGING SERVICE	CMRS (CELLULAR/MOBILE SERVICE)	INTERSTATE TELECOMMUNICATION SERVICE PROVIDERS	COMBINED TELECOMMUNICATIONS
Projected Units	23,600,000	125,000,000		
Projected Annualized ARPU	$ 96.00	$ 543		
Interstate Factor	0.12	0.15		
Total Interstate Revenue	$271,872,000.00	$10,185,750,000.00	$66,544,000,000.00	$77,001,622,000.00
Projected Revenue Requirements	$ 1,776,184.00	$ 29,953,140.00	$ 102,072,402.00	$ 133,801,726.00
Regulatory Fee per Unit	$ 0.08	$ 0.24		
Regulatory Fee per Revenue	$ 0.0065	$ 0.0029	$ 0.00153	$ 0.00174
Revised Revenue Requirement	$ 472,417.88	$ 17,699,249.64	$ 115,630,058.48	$ 18,171,667.52
Revised Fee per Unit	$ 0.020	$ 0.142		
Revised Fee per Interstate Revenue	$ 0.00174	$ 0.00174	$ 0.00174	